

HOUSE FINANCE, WAYS AND MEANS COMMITTEE AMENDMENT #1

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2528*

House Bill No. 2572

by deleting Section 1 in its entirety and by adding the following new sections and renumbering the remaining section accordingly:

SECTION 1. Tennessee Code Annotated, Section 63-6-101(a), is amended by substituting the word "twelve (12)" for the word "ten (10)" in the first sentence, and by substituting the word "three (3)" for the word "one (1)" in subsection (a)(2) and by changing the singular references of one consumer to the plural reference in the rest of the subsection, and by adding the following as a new subsection (a)(4):

() The board is authorized to issue advisory opinions to any affected person regarding any matters within the board's primary jurisdiction. Any dispute regarding an advisory opinion may, if the board chooses to do so, be resolved pursuant to the declaratory order provisions of §4-5-223.

SECTION 2. Tennessee Code Annotated, Section 63-6-204(a)(1), is amended in subsection (a)(1) by inserting the word and punctuation "diagnose," between the words "to" and "treat".

SECTION 3. Tennessee Code Annotated, Section 63-6-209, is amended in subsection (a) by deleting the words "by the division as directed", and is further amended by adding the sentence "The board shall also issue to such applicant a certificate of registration signed by the executive director of the board, which certificate shall recite that the person is duly registered for the years specified.", and is further amended in subsection (b) by inserting the words "and special licenses based upon licensure in another state for the limited purpose of authorizing the practice of telemedicine" between the words "licenses" and "to" in the second sentence of that

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subsection, and is further amended by adding the following as new, appropriately lettered subsections:

() Any certificate of registration issued by the board shall contain the name of the person to whom it is issued, the address of the person, the date and number of the license, and such other information as the board deems necessary. The address contained on this certificate of registration shall be the address of the licensee where all correspondence and renewal forms from the board shall be sent, during the two (2) years for which the certificate of registration has been issued, and shall be the address deemed sufficient for purposes of service of process.

() Any licensee whose address changes from the address contained on the registration certificate shall, within thirty (30) days thereafter, notify the board of the address change. Upon receipt of notification, the board shall issue, without additional fee, a new registration certificate to the licensee for the new address.

SECTION 4. Tennessee Code Annotated, Section 63-6-210, is amended by deleting the language of that section in its entirety and substituting instead the following new language:

(a) Each person licensed to practice medicine in this state shall biennially, pursuant to the renewal system established in compliance with subsection (b), apply to the board for a renewal of licensure and shall pay a renewal fee as set by the board. Each application shall be made on a form to be furnished by the

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board and sent to such licensee well in advance of the scheduled renewal date.

The board shall in its discretion, absent receipt of derogatory information, renew licensure upon application made in due form and upon payment of all required fees and issue a new biennial registration certificate.

(b)(1) There is hereby authorized the establishment of a system of license renewals at alternative intervals that will allow for the distribution of the license workload as uniformly as is practicable throughout the calendar year. Licenses issued under this renewal system are valid for twenty-four (24) months, and shall expire on the last day of the last month of the license period. However, during any transition period, or at any time thereafter when the board shall determine that the volume of work for any given interval is unduly burdensome or costly, either the licenses or renewals, or both, may be issued for terms of not less than six (6) months nor more than eighteen (18) months. The fee imposed for any license under any renewal system for a period of other than twenty-four (24) months shall be proportionate to the biennial fee and modified in no other manner, except that the proportional fee shall be rounded off to the nearest quarter of a dollar (25 cents).

(2) No renewal application will be accepted after the last day of the month following the license expiration date under the renewal system implemented pursuant to this subsection. In the event a person fails to timely apply for renewal of licensure as provided herein, that person's license shall be processed for administrative revocation pursuant to a notice issued to the person, by certified

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mail, return receipt requested at the address specified on the person's registration certificate, offering an opportunity for a hearing. When any person practices medicine pursuant to a license that has not been timely renewed, such conduct shall not be considered to be the practice of medicine without a valid license, until such time as the board takes action to administratively revoke the person's license for failure to renew.

(c) Any person who fails to timely renew licensure and whose license is administratively revoked as provided herein, may seek licensure reinstatement from the board. The board, in its sole discretion and absent receipt of any derogatory information, may reinstate the license upon good cause being shown, and upon payment of all past due renewal fees, and upon the further payment of a late renewal penalty as set by the board, and the further compliance with whatever other reasonable conditions are deemed necessary by the board.

(d) Any person licensed to practice by the provisions of this chapter, who has retired or may hereafter retire from practice in this state, shall not be made to register as required by this chapter if the person shall file with this board an affidavit of retirement form furnished by the board. The affidavit shall state the date on which the person retired from practice and such other facts as shall tend to verify such retirement as the board shall deem necessary. If the person thereafter wishes to reenter practice in this state, the person shall apply for licensure reactivation with the board, pay a reactivation fee as set by the board,

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and shall meet such other reasonable requirements as may be deemed necessary by the board.

(e) The board shall have the authority to create a renewable inactive licensure status, as it deems appropriate upon payment of an appropriate fee assessment and compliance with requirements established by the board, for those licensees who actively practice medicine in a state other than Tennessee.

(f) In order to ensure that the board has the most updated and accurate data on licensees and applicants for licensure within the state, the board shall cooperate with the Tennessee Medical Association by comparing and sharing computer data bases and other physician identification file information, including without limitation, license numbers, medical education numbers, social security numbers, home and business address information, and any other data of a similar, non-confidential nature.

SECTION 5. Tennessee Code Annotated, Section 63-6-213, is amended by adding the following new subsections (c), (d), and (e):

(c)(1) The board may, through the health related board's office of general counsel, petition any circuit or chancery court having jurisdiction over any person within this state, who is practicing medicine without a license or in violation of a restriction or condition placed upon a license regardless of whether such practice resulted from a license being restricted, conditioned, denied, or because a license has been suspended or revoked by action of the board, or any other

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reason, to enjoin such person from conducting or continuing to conduct the unlawful practice of medicine within this state.

(2) Jurisdiction is conferred upon the circuit and chancery courts of this state to hear and determine all such causes as equity causes and are authorized to exercise full and complete jurisdiction in these injunctive proceedings. Nothing in this section shall be construed as conferring criminal jurisdiction upon any court not now possessing such criminal jurisdiction, nor shall any such court, as an incident to the injunctive proceedings herein authorized, have the power to assess criminal penalties.

(d)(1) With respect to any person required to be licensed, permitted or authorized by the board, the board may assess a civil penalty against such person in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a board statute, rule or order. This section is specifically intended to give jurisdiction to the board over persons who are not licensed pursuant to this chapter but who are practicing medicine and those who are licensed but are practicing medicine in violation of a restriction or condition placed on their licenses, or who are practicing after their licenses have been revoked or suspended by action of the board.

(2) The board shall by rule establish a schedule designating the minimum and maximum civil penalties that may be assessed under this section. In assessing civil penalties, the following factors may be considered:

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(A) Whether the amount imposed will be a substantial economic deterrent to the violator;

(B) The circumstances leading to the violation;

(C) The severity of the violation and the risk of harm to the public;

(D) The economic benefits gained by the violator as a result of noncompliance; and

(E) The interest of the public.

(3) Civil penalties assessed pursuant to this section shall become final thirty (30) days after the date a final order of assessment is served.

(4) If the violator fails to pay an assessment when it becomes final following any appeals, the board, through its counsel, may apply to the appropriate court for a judgment and seek execution of such judgment.

(5) Jurisdiction for recovery of such penalties shall be in the chancery court of Davidson County, or the chancery court of the county in which all or part of the violations occurred.

(6) All sums recovered pursuant to this section shall be paid into the state treasury.

(e) The board shall retain rulemaking authority to adjust how its contested case docket is administered in order to provide for the efficient and orderly disposition of contested cases. This authority may include rulemaking the setting of reasonable limitations on deadlines for case settlements, and whether several contested cases are set on each meeting's docket of business.

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SECTION 6. Tennessee Code Annotated, Section 63-6-214, is amended in subsection (a)(4) by inserting the words and punctuation ", including but not limited to, informal settlements, private censures, and warnings," between the words "licensee" and "as", and is further amended in subsection (b) by moving the word "and" from the end of item (18) to the end, after the semicolon, of item (20), and is further amended by deleting the periods at the ends of items (19) and (20) and replacing them with semicolons, and is further amended by adding, as a new, appropriately numbered item, the sentence "() Practicing medicine without a license issued by the board or on a license that has been revoked or suspended by the board, or practicing in violation of any restriction or condition placed upon a license by the board.", and is further amended in subsection (g) by deleting the first sentence and substituting instead "For purposes of actions taken pursuant to subdivisions (b)(4), (12) and (13) or any other subsection in which the standard of care is an issue, any Tennessee licensed physician serving as a board member, hearing officer, designee, arbitrator or mediator is entitled to rely upon his or her own expertise in making determinations concerning the standard of care and is not subject to voir dire concerning such expertise.", and is further amended by adding the following new subsections lettered (h), (i), (j), (k) and (l):

(h)(1) All materials, documents and other matters relating to, compiled or created pursuant to an investigation conducted by the board's investigators against any health care practitioner under the board's jurisdiction, shall be exempt from the public records act until the filing of a notice of charges. After the filing of a notice of charges, only the information and those materials and documents upon which the charges are based are

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available for disclosure under the public records act. Provided, however, the identifying information of the following, as well as all investigator created documents and reports, shall remain confidential at all times unless and until introduced in the proceedings:

- (A) A complainant;
- (B) Any witness who requests anonymity;
- (C) A patient; or
- (D) Medical records.

(2) This section does not modify or limit the prehearing discovery provisions set forth in the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 3.

(i)(1) The board may utilize one or more screening panels in its investigative and disciplinary process to assure that complaints filed and investigations conducted are meritorious and to act as a mechanism for diversion to professional peer review organizations and/or impaired professionals' associations or foundations those cases which the board, through established guidelines, deems appropriate; upon diversion, such entities shall retain the same immunity as provided by law for the board.

(2) The screening panels shall consist of as many members as the board directs, but shall include at least one (1) but no more than three (3) licensed physicians, who may be members of the board or may serve either voluntarily or through employment by or under contract with the board;

(3) The activities of the screening panels, and any mediation or arbitration sessions shall not be construed as meetings of an agency for purposes of the Open Meetings Act and to the extent required by subsection (h)(2) shall remain confidential.

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The members of the screening panels, mediators, and arbitrators have a deliberative privilege and the same immunity as provided by law for the board, and are not subject to deposition or subpoena to testify regarding any matter or issue raised in any contested case, criminal prosecution, or civil lawsuit which may result from or be incident to cases processed before them.

(j) Notwithstanding any provision of the Uniform Administrative Procedures Act to the contrary, hearing officers are authorized to, and may hear board mediation, arbitration, or disciplinary contested cases, but may not issue final orders in contested case matters. Notwithstanding any of the provisions of §§4-5-314 and 4-5-315, which may be or are inconsistent, such hearing officers may only issue findings of fact and conclusions of law which shall be referred directly to the board or a duly constituted panel thereof for final action. The board or duly constituted panel, after hearing testimony and arguments from both parties regarding the appropriate disciplinary action and, if allowed by the board, arguments on any controversy raised by the hearing officer's or designee's order, shall issue a final order to include the imposition of what, if any, disciplinary action is deemed appropriate. Only the board or a duly constituted panel thereof shall have the authority to issue final orders which dispose of a pending contested case regardless of whether the issues resulting in the dispositive action are procedural, substantive, factual or legal. If a hearing officer is not available when a contested case, or any motion filed therein requiring action, is ready and scheduled to be heard or fails to timely prepare findings and conclusions pursuant to board established guidelines, the board or a duly constituted panel thereof may rule on the

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motions and/or hear the contested case or utilize the record compiled before the hearing officers and prepare its own findings of fact, conclusions of law and then issue a final order. With regards to findings and conclusions issued by the hearing officer, or any mediator or arbitrator, the board or any duly constituted panel thereof which reviews the case may do any of the following:

(1) Adopt the hearing officer's, mediator's or arbitrator's findings of fact and conclusions of law, in whole or in part; or

(2) Make its own findings of fact and conclusions of law, based solely on the record and the expertise of the members of the board or panel, in addition to or in substitution of those made by the hearing officer, mediator or arbitrator; or

(3) Remand the matter back to the hearing officer, mediator or arbitrator for action consistent with the board or panel findings and conclusions in the matter; or

(4) Reverse the hearing officer's, mediator's or arbitrator's findings and/or dismiss the matter entirely.

(k) The board retains jurisdiction to modify or refuse to modify, upon request of any party, any of its orders issued pursuant to this section in compliance with procedures established by the board. The board, pursuant to duly promulgated rules may, whenever a final order is issued after a disciplinary contested case hearing which contains findings that a licensee or other person has violated any provision of this chapter, assess the costs directly related to the prosecution of the case against the licensee or person.

(l) Any elected officer of the board, or any duly appointed or elected chairperson of any panel of the board, or any screening panel, and any hearing officer, arbitrator or

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mediator shall have the authority to administer oaths to witnesses, and upon probable cause being established, issue subpoenas for the attendance of witnesses and the production of documents and records.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

AND FURTHER AMEND by renumbering Section 2 as Section 8.